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LEGISLATIVE REAPPORTIONMENT IN NORTH DAKOTA: FROM STATEHOOD TO THE PRESENT

by
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PREFACE

In the spring of 1980, the Bureau of Governmental Affairs entered into an agreement with the Legislative Council to provide the legislature with alternative reapportionment plans drawn with the assistance of computer technology. The idea of drafting reapportionment plans away from the partisan influences that so often have confronted the redistricting process was an attempt to avoid the political and legal battles that have dominated North Dakota's reapportionment history. Whether the effort will be successful is as yet undetermined. Due to delays in receiving the necessary information from the 1980 census, the legislature has called a special session for November, 1981, to consider reapportionment options.

To provide the legislature, the news media and the public with some perspective on the approaching special session, the Bureau is pleased to present this brief overview of North Dakota's legislative reapportionment history.

Much of the early history contained in this report has been derived from two University of North Dakota master's theses: "Legislative Reapportionment in North Dakota," 1961, by Carroll W. Crouch and "Legislative Reapportionment in North Dakota--1961-1965," 1968, by Donald P. Benkusky. More recent developments have been traced from information obtained in Legislative Council staff memoranda and various court decisions. The reapportionment maps contained in this report were drawn by Floyd Hickok, Visiting Professor of Geography at UND, who was also responsible for preparation of the reapportionment plans which will be considered by the legislature in November.

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1889

The constitutional convention adopted the North Dakota Constitution which contained provisions dividing the state into no less than 30 and no more than 50 senatorial districts, each being nearly equal in population. The size of the house of representatives was specified to be no less than 60 nor more than 140. House members were to be apportioned to and elected at large from each senatorial district. No more than one senator could represent a district. The legislature also was required to fix the number of legislators and reapportion the state into senatorial districts after every mid-decade state census and after each federal census.

The constitutional convention also adopted the first legislative apportionment plan which called for the election of 31 senators and 62 house members to be elected from 31 legislative districts. (Map 1)

1890

The legislature, by a unanimous vote, approved the state's first reapportionment act. The law made only a minor change to the existing apportionment plan involving the addition of four townships to the third legislative district in Walsh County.

1895

The legislature failed to authorize a state census as required by the state Constitution so reapportionment was postponed until after the federal census of 1900.

1901

Following the introduction of several reapportionment measures which generated sharp divisions of opinion, the legislature passed a compromise reapportionment plan providing for 40 senatorial districts from which 40 senators and 100 house members would be elected. (Map 2)

1907

After the state census of 1905 the legislature adopted a new legislative reapportionment plan that expanded the number of senatorial districts to 47 and set the number of house members at 95. (Map 3)

1909

A reapportionment plan was unanimously adopted that added two senatorial districts to give representation to the newly-formed counties of Mercer, Oliver, Dunn, Hettinger and Adams. This increased the membership of the senate to 49 and the house to 103 members. (Map 4)

1911

Following the federal census, the legislature passed a reapportionment plan to give more representation to western counties. This resulted in a plan that included 50 senators and 111 house members. (Map 5)

1915

The legislature passed a reapportionment measure by a unanimous vote that reduced Cavalier County to a single district and put the new county of Sioux into a district with Adams and Hettinger counties. This plan provided for 49 senators and 113 house members. (Map 6)

The legislature also considered and the house of representatives narrowly defeated a resolution for a constitutional amendment that would have given each county representation by a single senator in the same manner as states are represented in the U.S. Senate.

1917

The legislature made a single change in the reapportionment plan of 1915 by allowing Grant County, which had been formed from part of Morton County, to retain the forty-seventh district.

1921

The Nonpartisan League, which controlled the senate, and the Independent Voters Association (IVA) which controlled the house, failed to reach an agreement on a reapportionment plan.

1923

The IVA, which controlled a majority in both houses of the legislature, was successful in passing a reapportionment measure on a party line vote. The bill, however, was strongly criticized by the Nonpartisan League for violating the principle of equal representation and seeking to perpetuate IVA control of the legislature. To the surprise of many, Governor R. A. Nestos vetoed his own party's reapportionment bill on the basis that there should be fewer members in the house and senate and that the plan failed to correct inequalities in some districts.

1925

The state census was performed but no reapportionment plan based on it was adopted. Following this census, the legislature failed to authorize any further state censuses and the constitutional provision requiring the state enumerations was repealed in 1961.

1931

Even though the legislature had not been reapportioned since 1915 the legislature adopted a new reapportionment plan by a narrow margin that contained the same number of house and senate members and made only minor modifications to the previous plan. (Map 7)

1941 and 1951

Despite population shifts from rural to urban areas that caused substantial inequalities in legislative representation, rural interests in the legislature successfully stymied attempts to reapportion following the 1940 and 1950 decennial censuses.

1955

A reapportionment plan that would have increased the size of the house by six members was defeated.

1958

The North Dakota Jaycees proposed a constitutional amendment to provide legislative reapportionment on a population basis. The measure provided for the establishment of a reapportionment commission if the legislature failed to reapportion in accordance with the state constitution. The petition drive failed to secure the necessary 20,000 signatures to get the measure on the ballot.

1959

Prompted by the Jaycee's activities, the legislature adopted a resolution calling for a constitutional amendment on reapportionment. The amendment, which was placed on the ballot in the June, 1960 primary election, proposed placing the existing senatorial districts in the Constitution permanently. The measure also proposed that there be at least one house member for each senatorial district and at least one house member for each county for those districts encompassing more than one county. The remaining members of the house would be apportioned by the legislature on a population basis after each federal decennial census. Failure of the legislature to reapportion would shift the duty to a commission composed of the chief justice of the supreme court, the attorney general, the secretary of state, and the majority and minority leaders of the house of representatives. This commission would be required to establish a reapportionment plan within 90 days after the legislature adjourned.

1960

The constitutional amendment on reapportionment was approved by a vote of 84,002 to 66,529. This amendment froze the senatorial districts as they existed under the 1931 reapportionment plan. Due to population shifts, the population per senatorial district varied from a low of 4,554 (Renville County) to a high of 46,686 (Fargo city).

1961-62

The legislature failed to pass a reapportionment plan and in accordance with the 1960 constitutional amendment, the special commission met and adopted what was called the "Burgum Plan" consisting of 49 senators and 115 house members. (Map 8) This plan was challenged in federal district court in North Dakota as a violation of federal civil rights and the equal protection clause of the fourteenth amendment to the U.S. Constitution. Lein v. Sathre, 201 F. Supp. 535 (D.N.D. 1962). The federal district court abstained from passing on the issues and stayed its proceedings pending action by the North Dakota Supreme Court. The court ruled that the plan adopted by the commission was unconstitutional. The court also ruled that the commission's authority to reapportion expired 90 days after the legislature adjourned, but that the legislature's duty to apportion was mandatory and continued until performed. Until the legislature performed its duty the court said the 1931 reapportionment plan would remain in effect. State ex rel. Lein v. Sathre, 113 N.W.2d 679 (N.D. 1962).

1962

The United States Supreme Court handed down a landmark decision in which it ruled that malapportionment of state legislatures represents a justiciable cause of action over which courts have subject matter jurisdiction. Baker v. Carr, 369 U.S. 186 (1962). Previously, federal courts had viewed reapportionment as a political question not appropriate for judicial resolution.

Following the decision in Baker v. Carr, the plaintiffs in Lein v. Sathre sought injunctive relief from the federal district court to restrain North Dakota elections pending reapportionment. The court denied this relief, but retained jurisdiction should the legislature convening in 1963 fail to adopt an acceptable reapportionment plan. Lein v. Sathre, 205 F. Supp. 536 (D.N.D. 1962).

1963

The legislature adopted a reapportionment measure termed the "Halcrow Plan" that reduced the size of the house of representatives from 113 to 109 and gave more representation to urban areas, but still did not apportion seats on an equal population basis. (Map 9)

1964

The United States Supreme Court ruled that reapportionment of both houses of a legislature must follow the principle of one person-one vote. Reynolds v. Sims, 377 U.S. 533 (1964). A suit challenging the 1963 legislative reapportionment was filed in the federal district court for North Dakota before the U.S. Supreme Court's decision in Reynolds v. Sims, but the district court handed down its decision after that historic case was decided. In Paulson v. Meier, 232 F. Supp. 183 (D.N.D. 1964), the court held that the 1960 amendments to the North Dakota Constitution and the existing reapportionment law and all preceding plans were unconstitutional as being violative of the equal protection clause of the United States Constitution. Due to lack of time to institute a new plan prior to the 1964 primary election, however, the court ruled that elections could proceed under the existing plan adopted in 1963. The court said the legislative assembly elected under this plan would have de facto status and must promptly pass reapportionment legislation.

1965

After considering several reapportionment options, the legislature adopted a reapportionment plan consisting of 53 senators and 106 house members. The plan divided 16 counties and included a population disparity of 30 percent between the smallest and largest populations per senator. The plan had 39 districts including seven multi-senator districts. (Map 10)

Following the legislature's action in passing a reapportionment plan, the plaintiffs in Paulson v. Meier filed briefs in federal district court seeking to invalidate the new reapportionment measure. The court declared that the reapportionment plan failed to meet constitutional standards and was void. Paulson v. Meier, 246 F. Supp. 36 (D.N.D. 1965).

After studying the various plans submitted to the 1965 legislature, the court, with only a minor modification, adopted the "Smith Plan" named for its author, R. R. Smith, a retired accountant from Grand Forks. This plan provided for 49 senators and 98 house members. It contained five multi-senator districts and violated 12 county boundaries. Population deviation was within 5 percent of average district population in 25 of the 39 districts, and only two districts had populations which deviated more than nine percent. (Map 11)

1971

The North Dakota Supreme Court assumed original jurisdiction in a case challenging the right of senators from multi-senator districts to hold office. The suit alleged that multi-senator districts violated section 29 of the North Dakota Constitution which provided that each senatorial district "shall be represented by one senator and no more." The court held that this section was unconstitutional in violation of equal protection, and, therefore, multi-senator districts were not invalid. Stockman v. Anderson, 184 N.W.2d 53 (N.D. 1971).

1972

Following failure of the 1971 legislature to reapportion after the 1970 federal census, a suit was filed in the federal district court for North Dakota seeking the court to order reapportionment into single-senator districts based upon the 1970 census, and to declare the 1965 "Smith Plan" invalid. The court held the 1965 plan to be unconstitutional and adopted the "Dobson Plan" named for its author Minot Daily News reporter Dick Dobson, who was a court-appointed Master. The Dobson Plan, which continued the multi-senator districts and contained substantial population variations, was to remain in effect only for the 1972 election. Chapman v. Meier, 372 F. Supp. 363 (D.N.D. 1972). This plan contained 39 districts from which 51 senators and 102 representatives were elected. (Map 12)

1973

The legislature overrode a gubernatorial veto in passing a reapportionment plan that contained five multi-senator districts and had a population variation of only 6.8 percent from smallest to largest population per senator. The plan did not go into effect, however, because it was referred to a vote of the people by supporters of the Democratic-NPL party. At the same time, an initiated measure was proposed to create a reapportionment commission to reapportion the state into single-senator districts. At a special election, December 4, 1973, the voters turned down both the legislative reapportionment plan and the initiated measure.

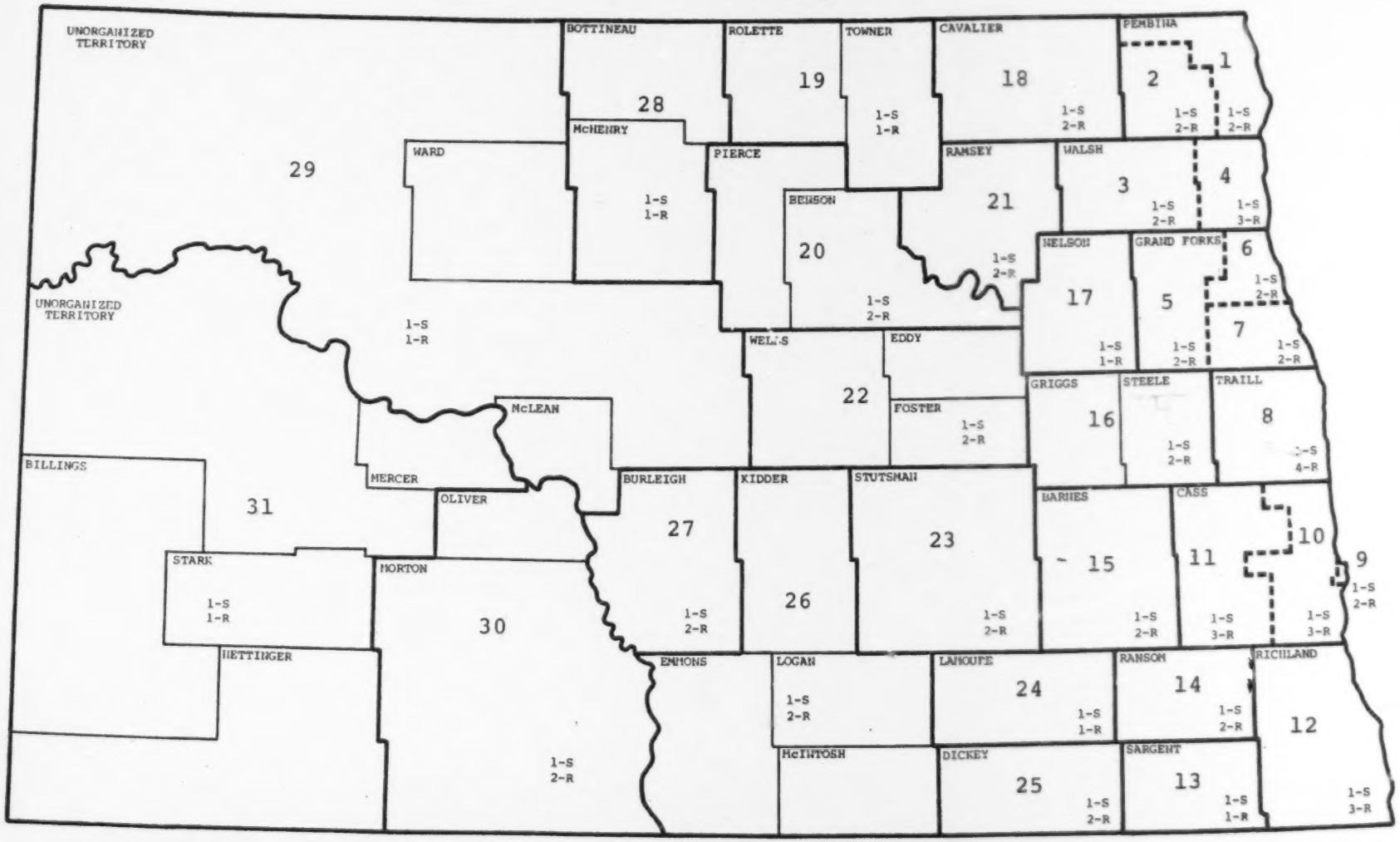
1974

Following defeat of the 1973 legislative reapportionment plan, the federal district court in the case of Chapman v. Meier, 372 F. Supp. 371 (D.N.D. 1974) made the Dobson Plan permanent. In so doing, the court held that multi-senator districts were not unconstitutional since no identifiable minority group was denied access to the electoral process by the plan. The court also justified the 20 percent population deviation on the basis of the absence of victimized minorities, the state's sparce population, and the desire to preserve physical and political boundaries such as the Missouri River and county lines.

The U.S. Supreme Court heard the appeal challenging the district court's decision to adopt the Dobson Plan. The Court ruled the plan unconstitutional in its use of multi-senator districts and its population variation. Chapman v. Meier, 420 U.S. 1 (1974). The Court held that if the plan had been legislatively enacted evidence of minority victimization must be proved by the challengers, but in a court-ordered reapportionment, the court must create single-senator districts if at all possible. The Court also held that the reasons cited by the district court were insufficient to justify a 20 percent population variation. Sparce population, for example, was not a justification for a higher population variance, but rather made it more important to have closer population equality since each vote has greater weight.

The legislature adopted the Dobson Plan, modified by the elimination of the multi-senator districts, with the exception of one two-senator district in Minot. This prompted the plaintiffs in Chapman v. Meier to return to federal district court to challenge the validity of the modified Dobson Plan and to seek the establishment of a constitutionally valid apportionment plan. The court ruled that the plan was unconstitutional in violation of equal protection. Chapman v. Meier, 407 F. Supp. 649 (D.N.D. 1975). The court then established the reapportionment plan that has been used through the 1980 election. (Map 13)

MAP 1
Legislative Apportionment of 1889

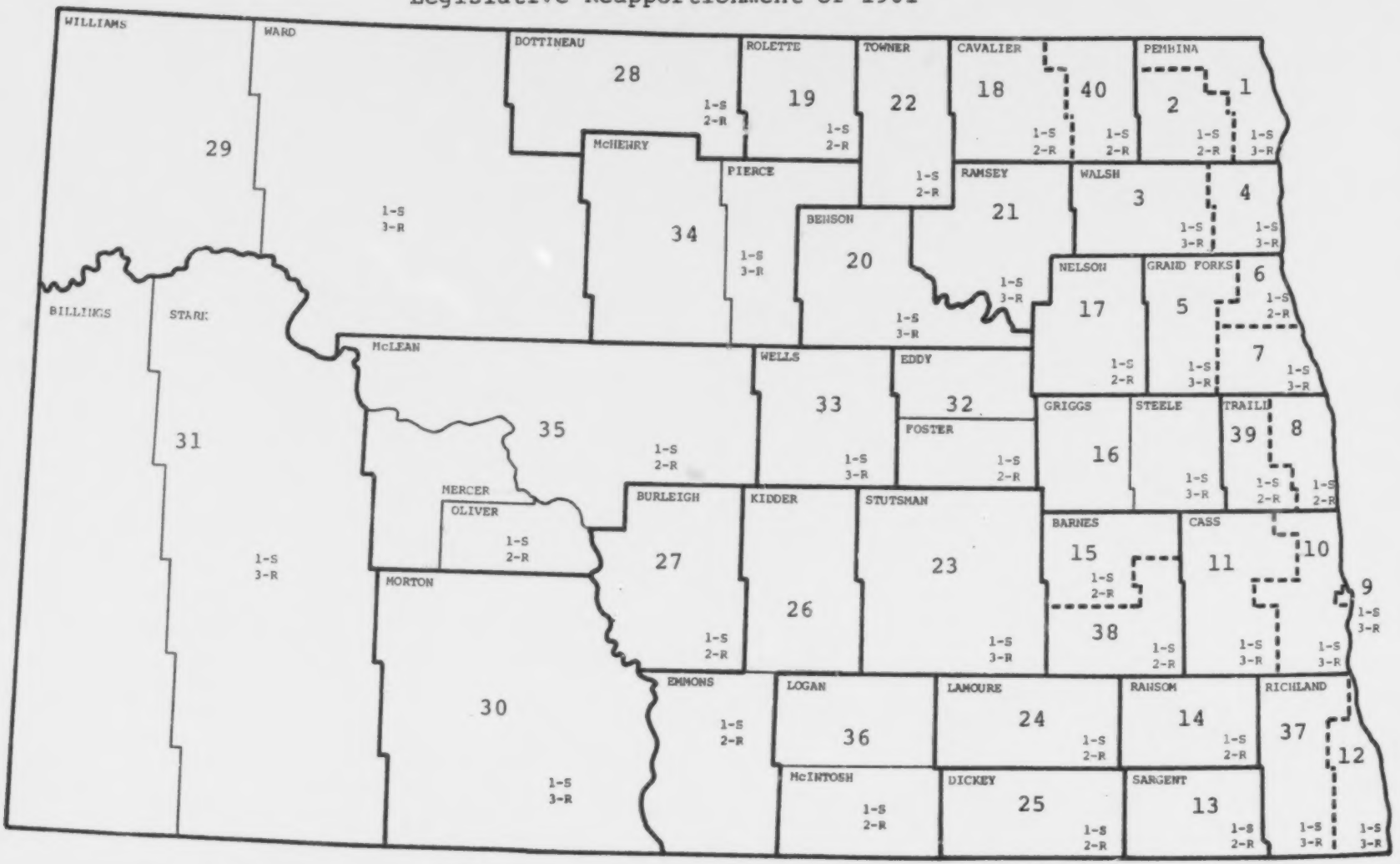


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

31 - Number of Districts
31-S - Number of Senators
62-R - Number of Representatives

MAP 2

Legislative Reapportionment of 1901

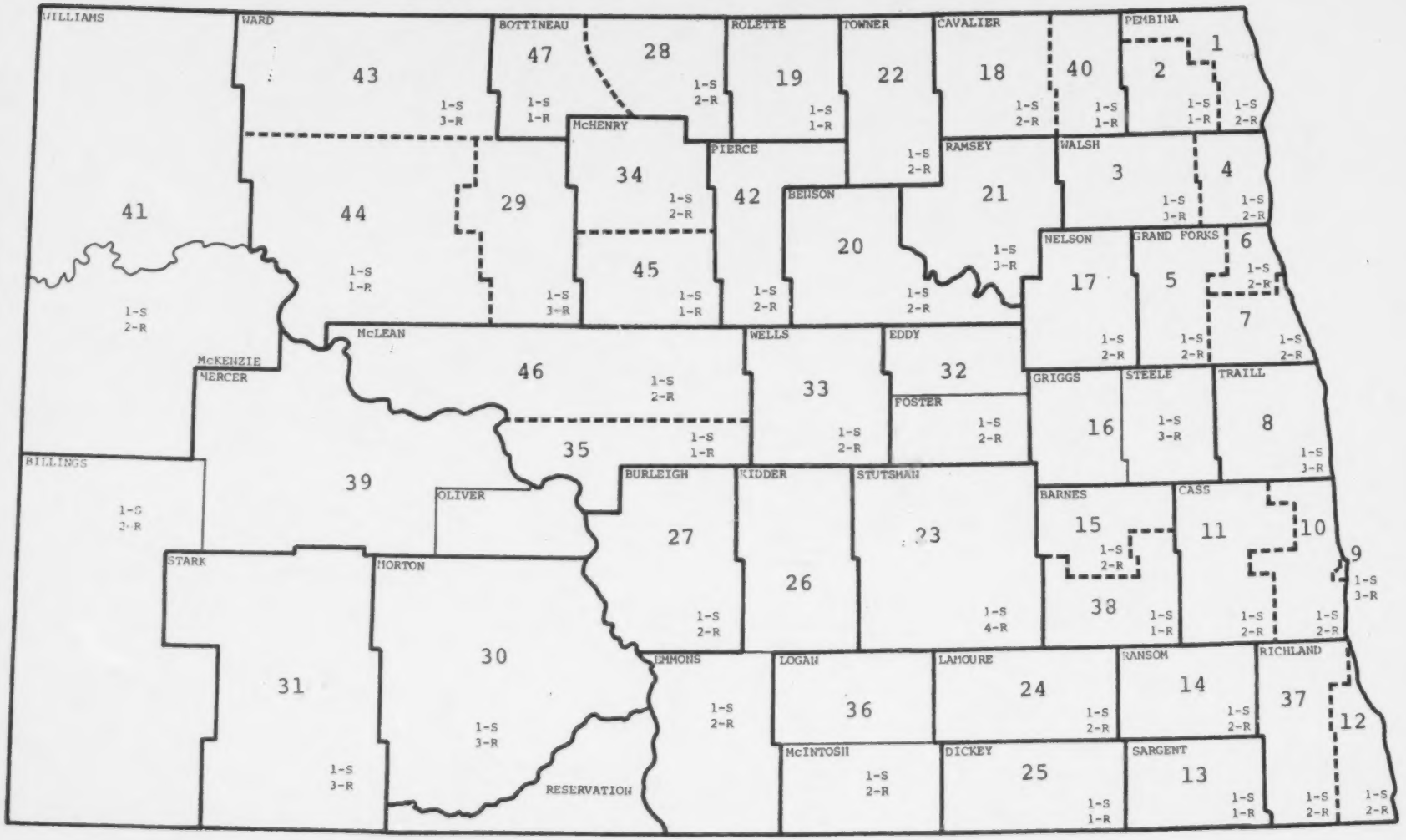


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

40 - Number of Districts
40-S - Number of Senators
100-R - Number of Representatives

MAP 3

Legislative Reapportionment of 1907



Indicates District & County Boundaries

Indicates County Boundary

Indicates District Boundary

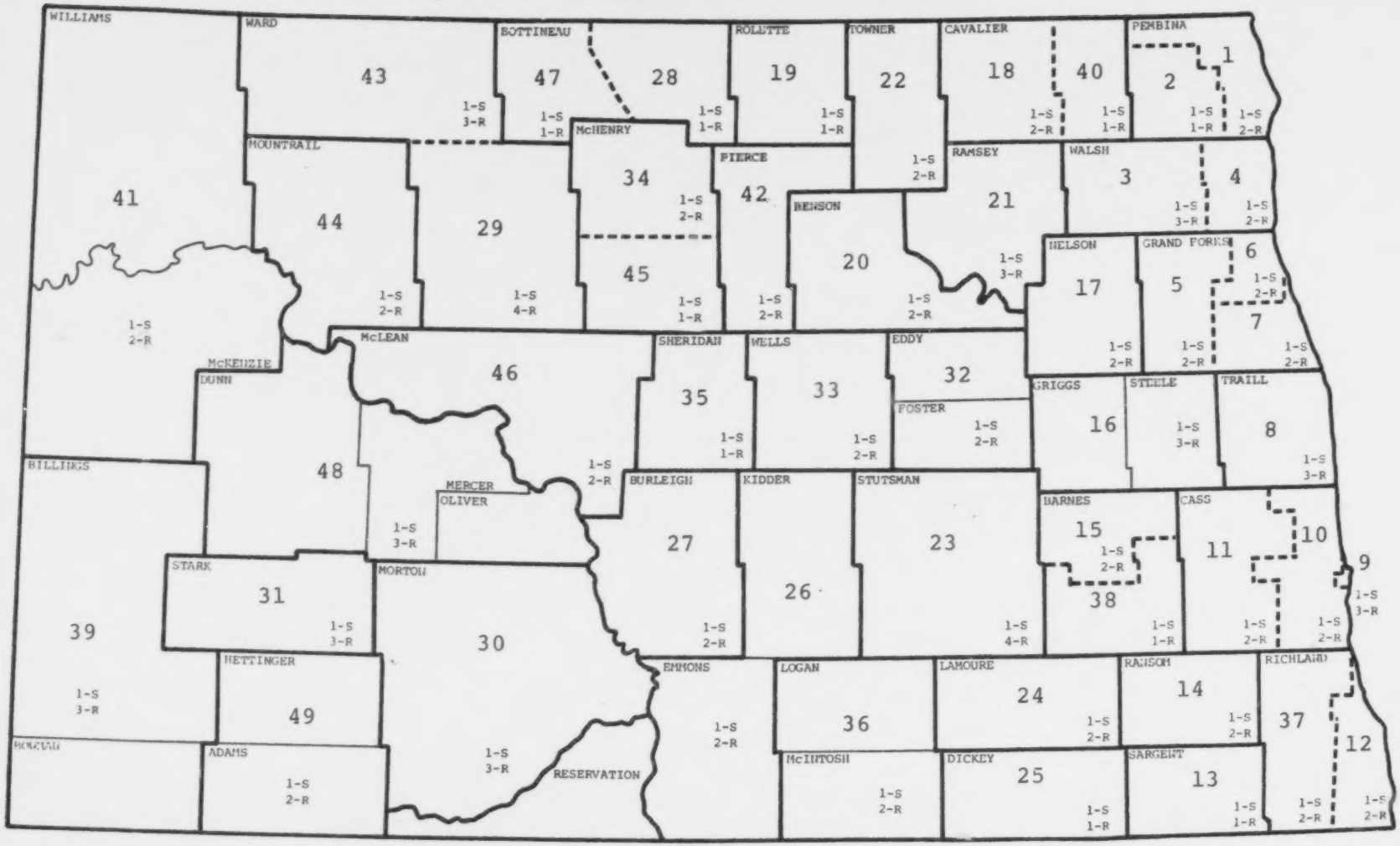
47 - Number of Districts

47-S - Number of Senators

95-R - Number of Representatives

Map 4

Legislative Reapportionment of 1909



Indicates District & County Boundaries

Indicates County Boundary

Indicates District Boundary

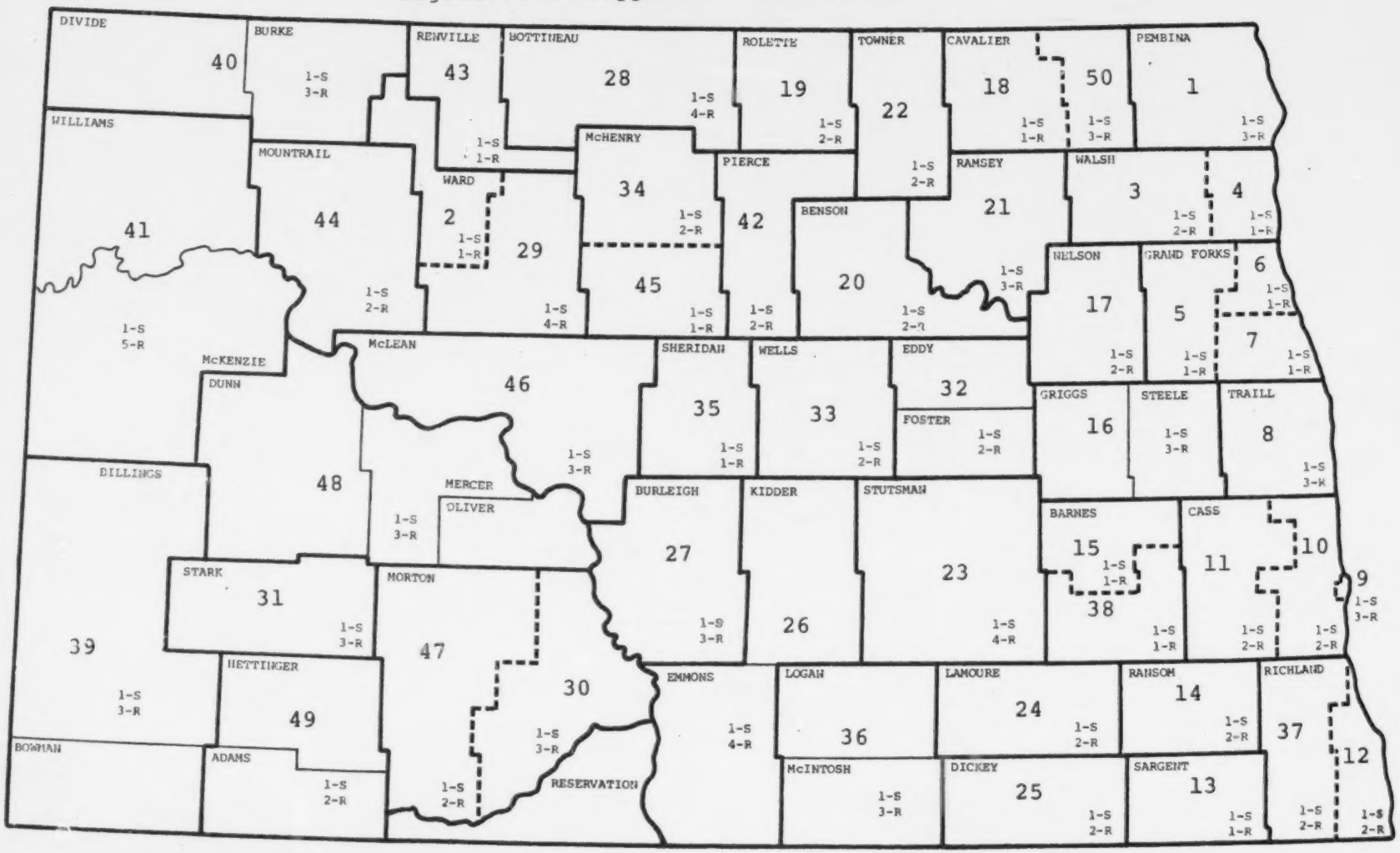
49 - Number of Districts

49-S - Number of Senators

103-R - Number of Representatives

MAP 5

Legislative Reapportionment of 1911

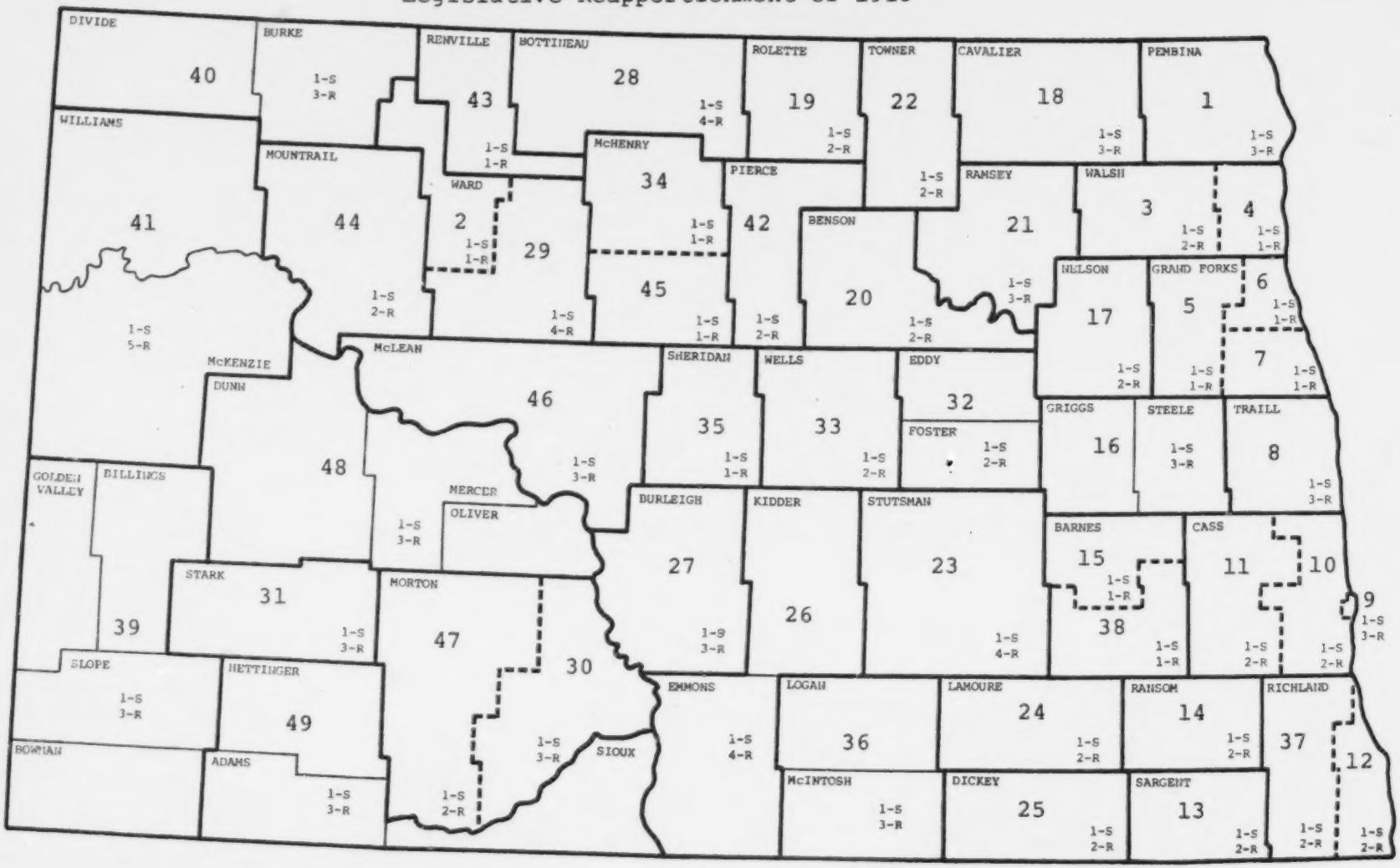


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

50 - Number of Districts
50-S - Number of Senators
111-R - Number of Representatives

MAP 6

Legislative Reapportionment of 1915

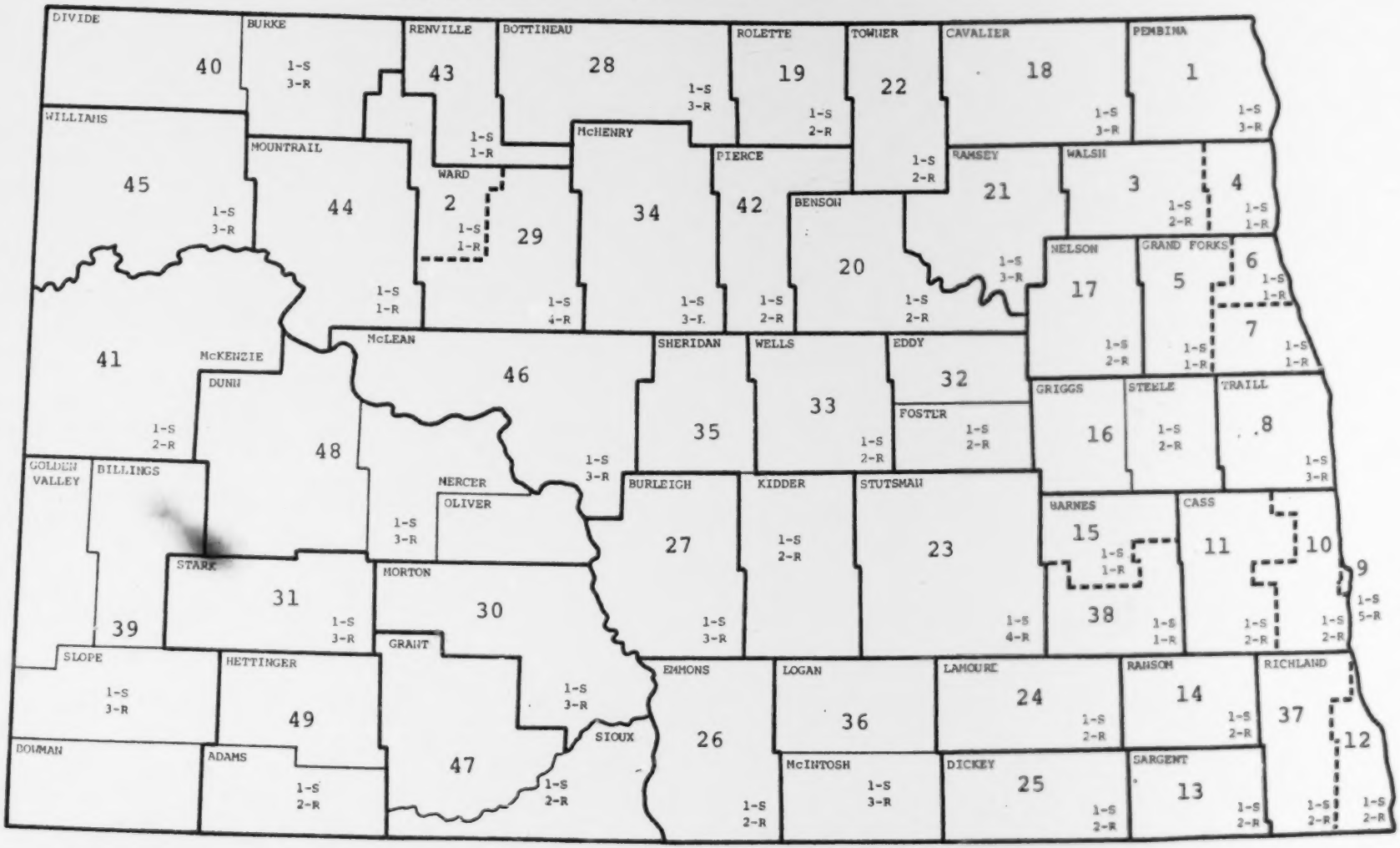


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

49 - Number of Districts
49-S - Number of Senators
113-R - Number of Representatives

MAP 7

Legislative Reapportionment of 1931

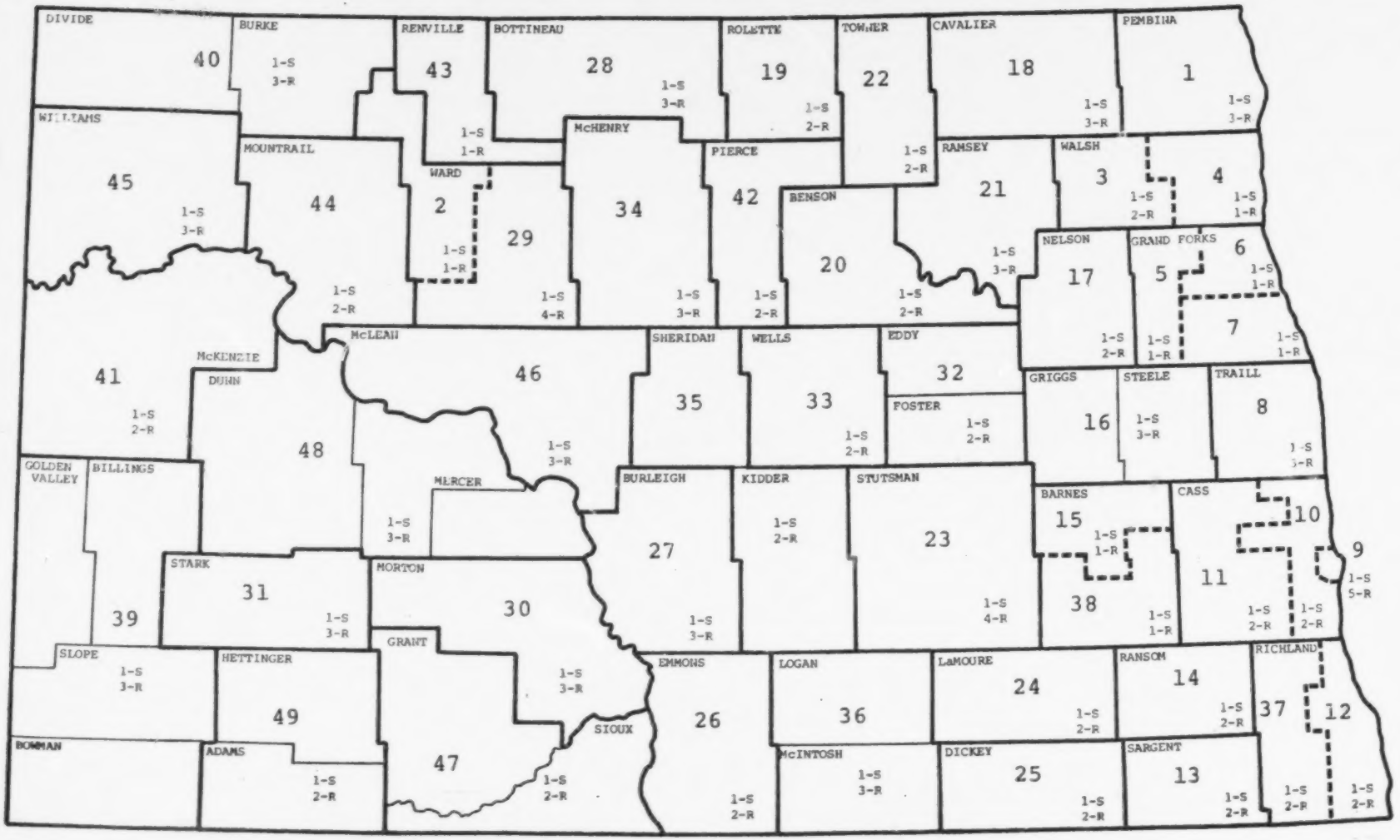


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

49 - Number of Districts
49-S - Number of Senators
113-R - Number of Representatives

MAP 8

Reapportionment by the Special Commission - 1961

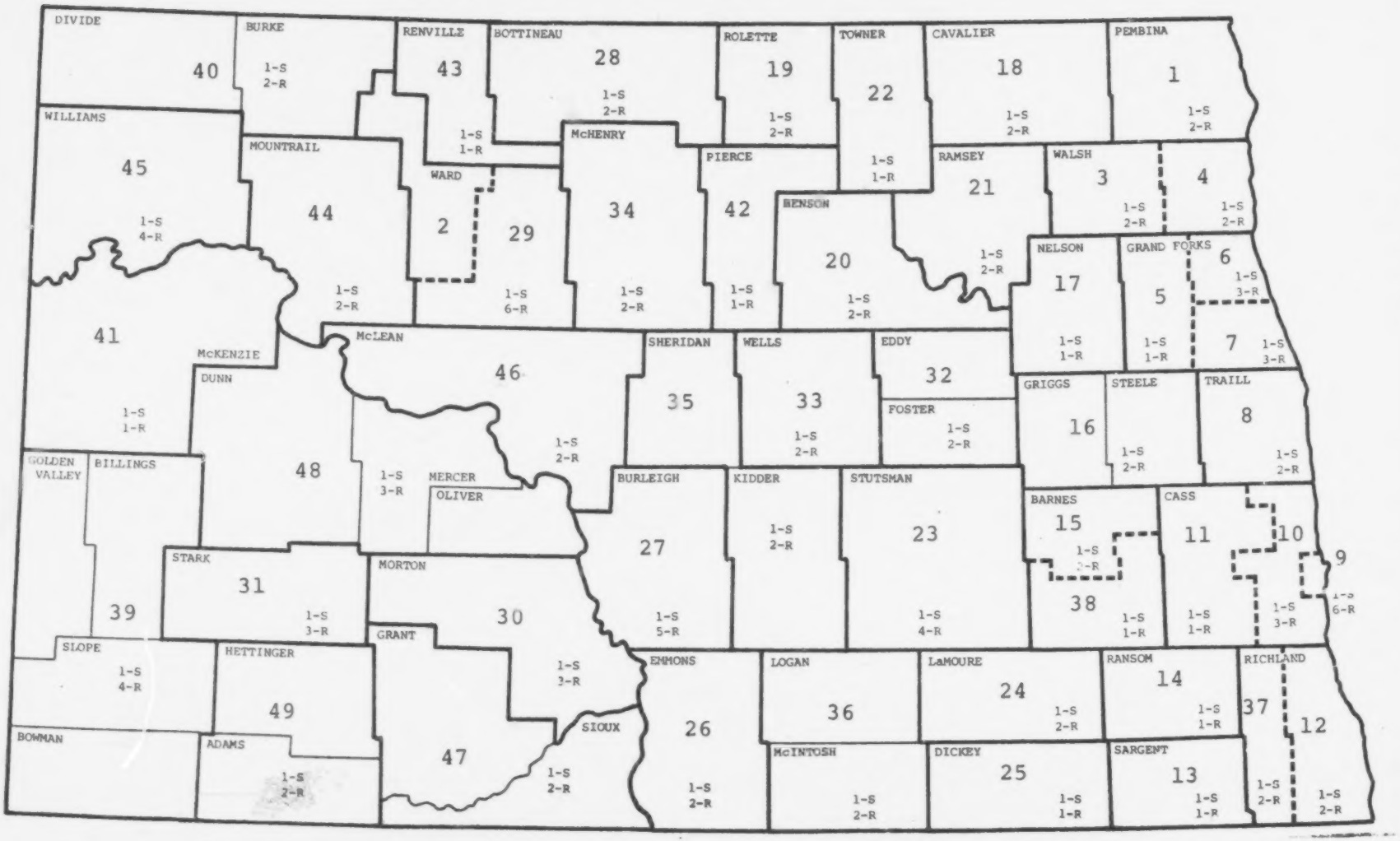


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

49 - Number of Districts
49-S - Number of Senators
115-R - Number of Representatives

MAP 9

Legislative Reapportionment of 1963



Indicates District & County Boundaries

Indicates County Boundary

Indicates District Boundary

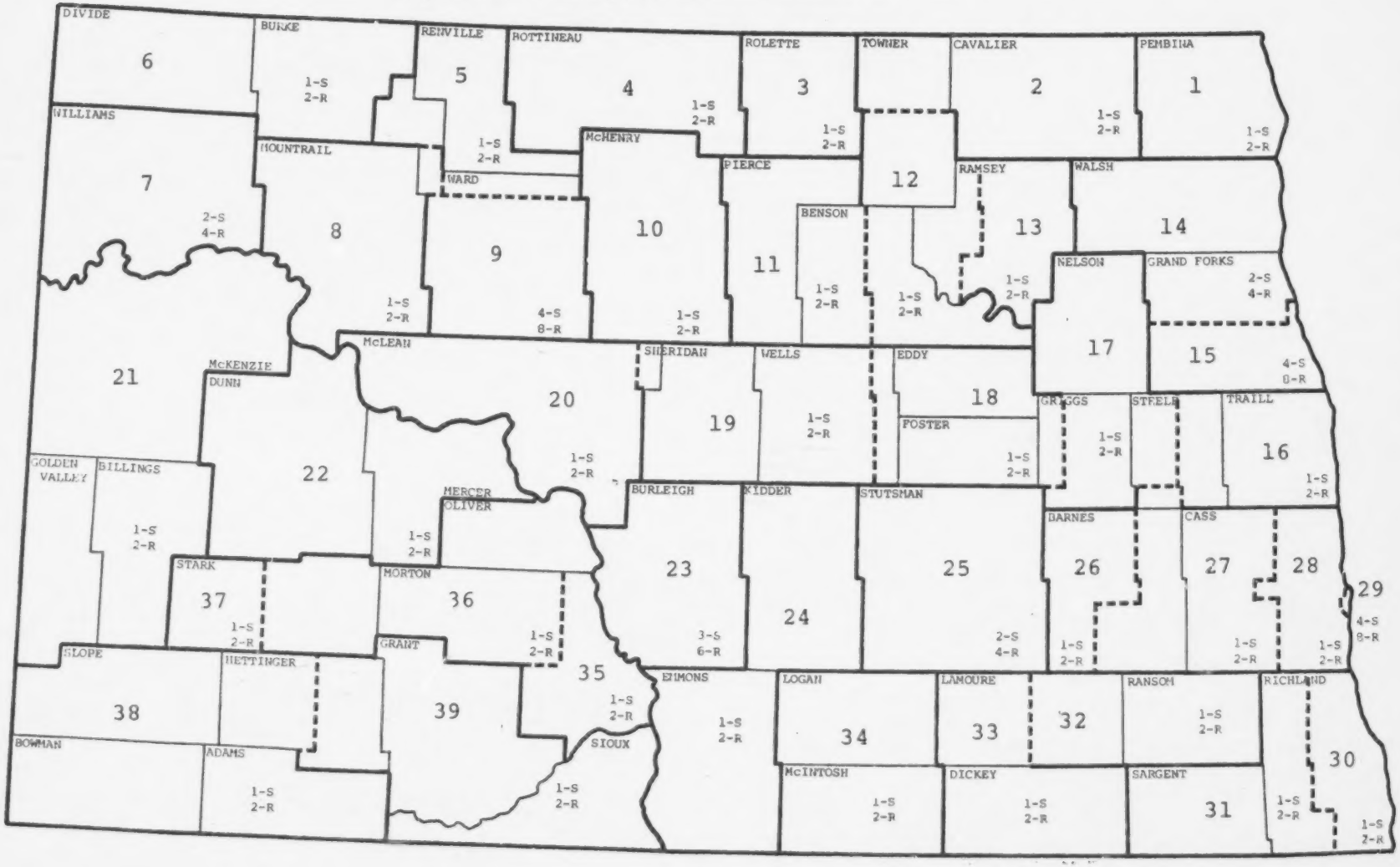
49 - Number of Districts

49-S - Number of Senators

109-R - Number of Representatives

MAP 10

Legislative Reapportionment of 1965

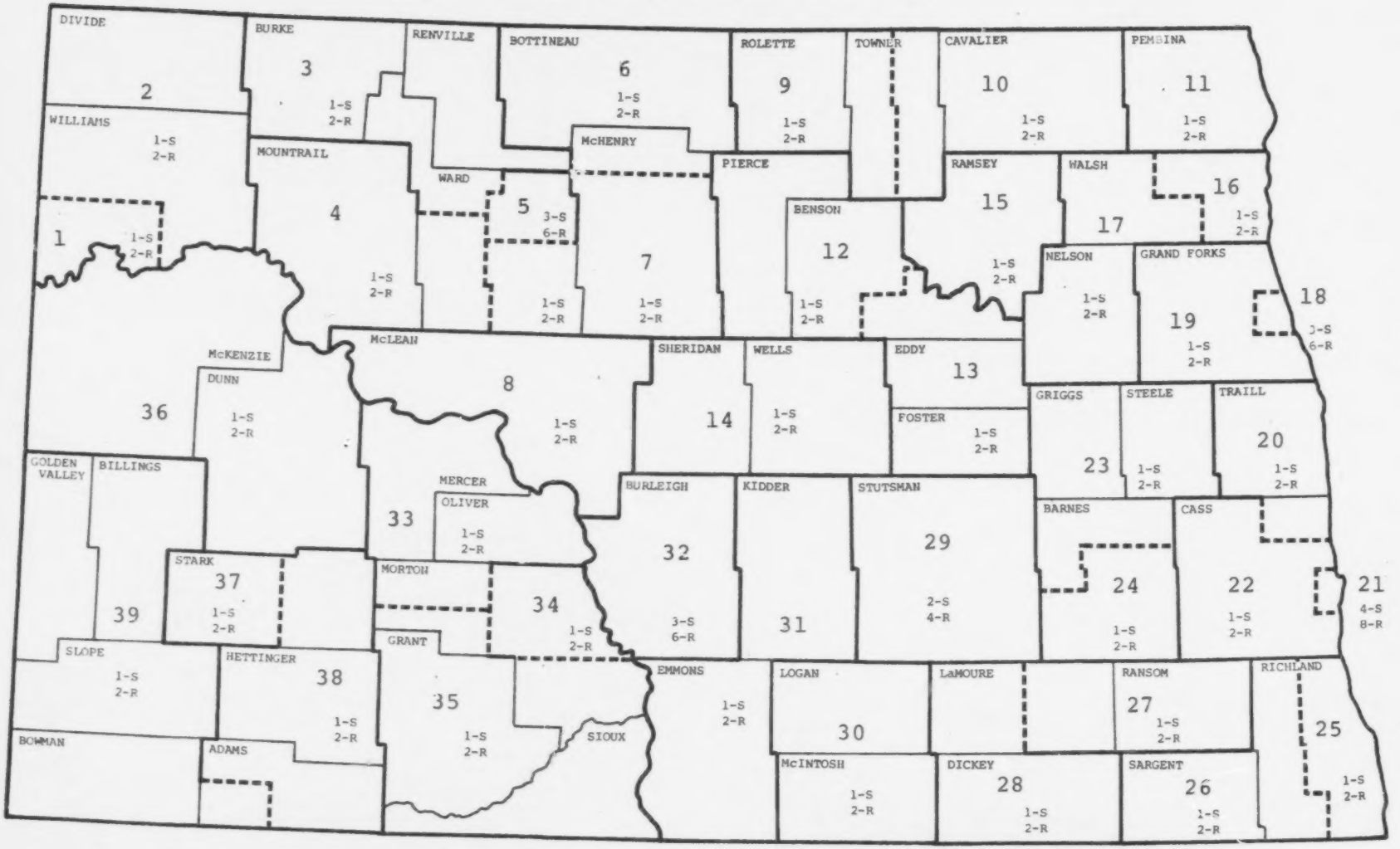


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

39 - Number of Districts
53-S - Number of Senators
106-R - Number of Representatives

MAP 11

District Court Reapportionment of 1965

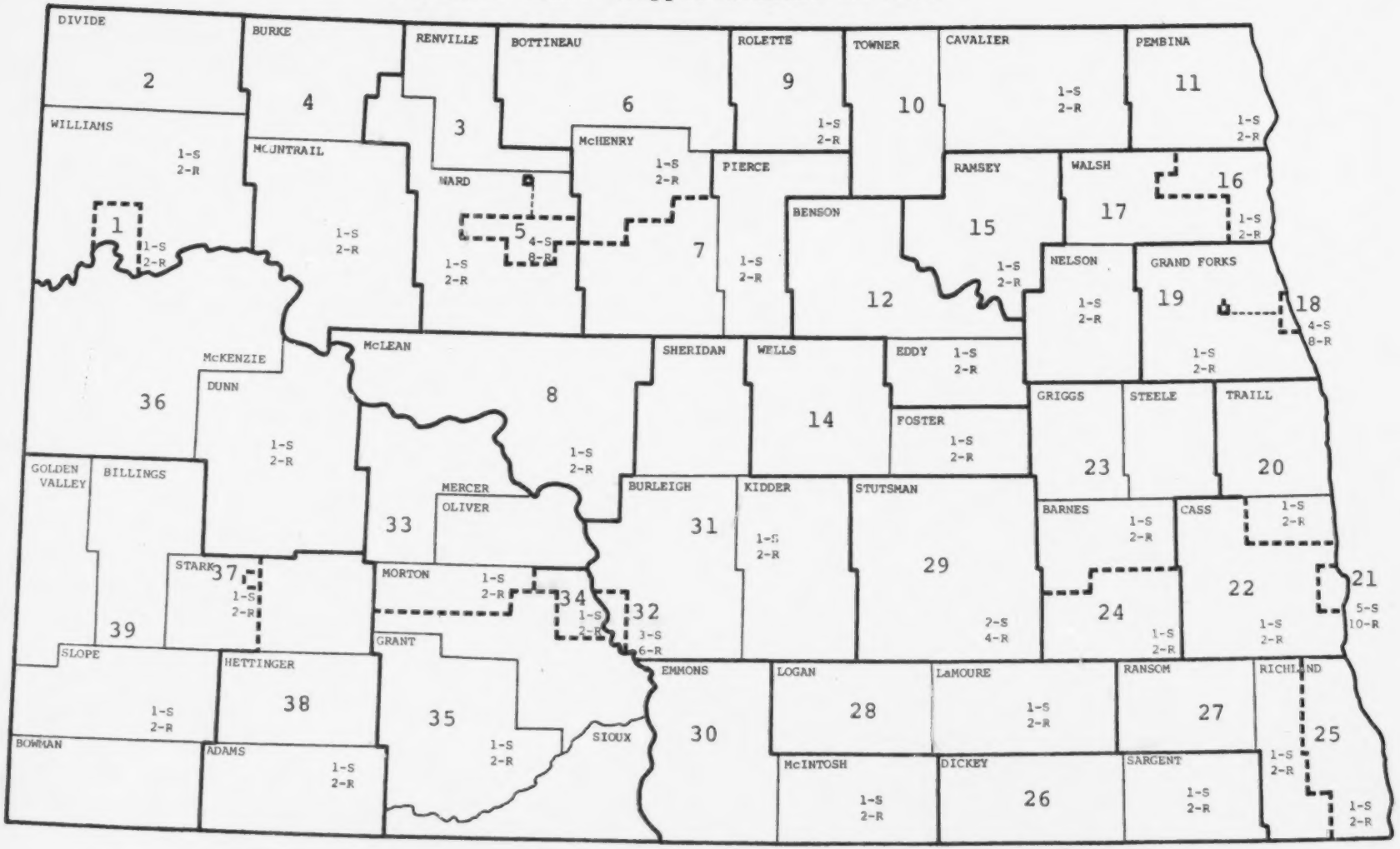


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

39 - Number of Districts
49-S - Number of Senators
98-R - Number of Representatives

MAP 12

District Court Reapportionment of 1972

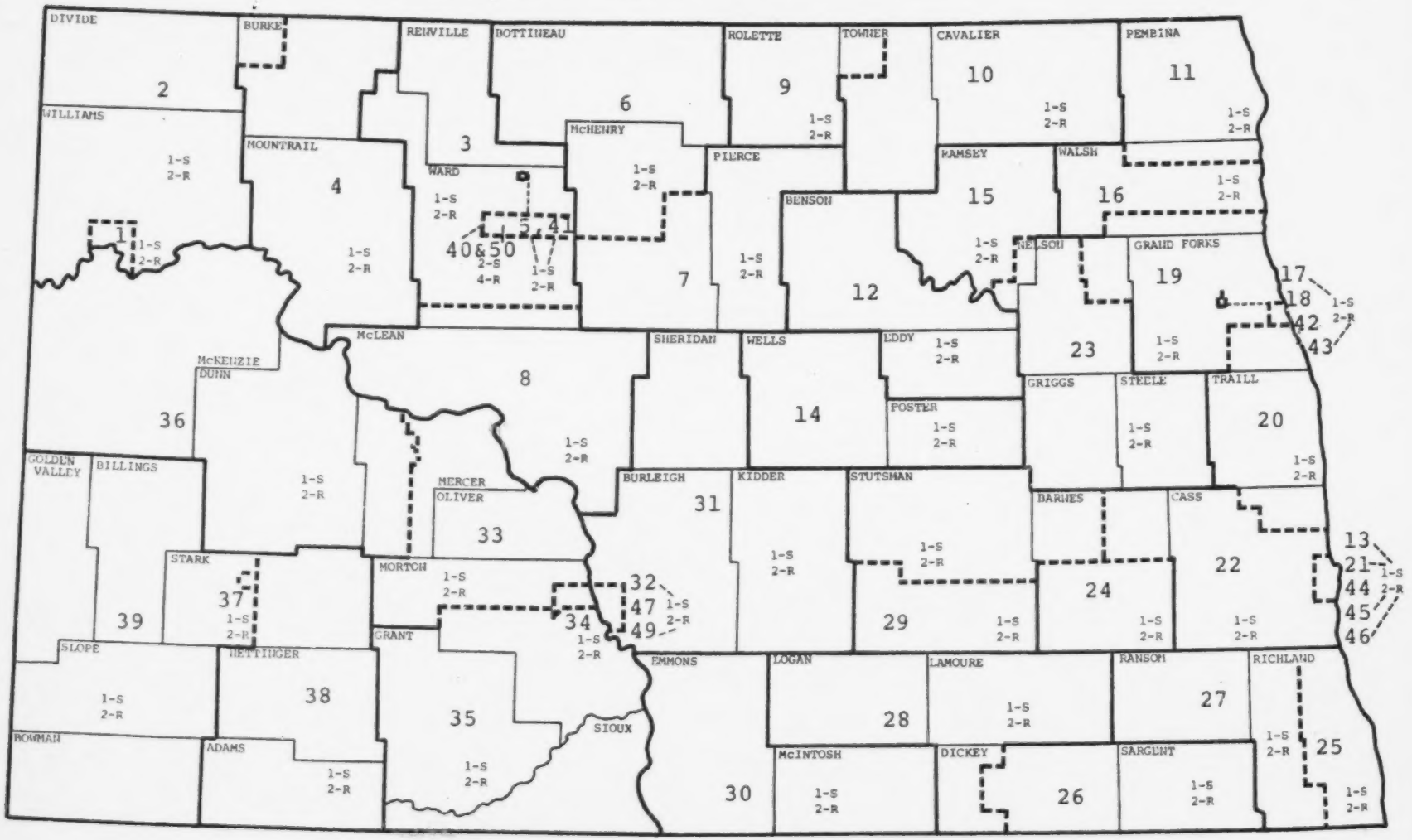


Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

38 - Number of Districts
51-S - Number of Senators
102-R - Number of Representatives

MAP 13

District Court Reapportionment of 1975



Indicates District & County Boundaries
Indicates County Boundary
Indicates District Boundary

38 - Number of Districts
50-S - Number of Senators
100-R - Number of Representatives